

## COMMENTS

### Notice of Appeal and Request for Comments

### Coastal Zone Management Act, Chevron Destin Dome 56 Unit (Florida)

## I. BACKGROUND AND LEGAL STANDARD OF REVIEW

The Coastal Zone Management Act (CZMA), 16 U.S.C. § 1451 *et seq.*, provides that a timely objection by a state precludes any federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA or "necessary in the interest of national security." CZMA § 307(c)(3)(A). On February 17, 1998, the State of Florida Department of Community Affairs (State of Florida), in its capacity as lead coastal management agency pursuant to Section 306(c) of the CZMA, found Chevron U.S.A., Inc.'s Initial Development and Production Plan (DPP) for Destin Dome Block 56 Unit (Chevron Destin Dome Block 56 Unit DPP) to be inconsistent with the CZMA. As set forth in NOAA's July 22, 1999, Federal Register notice, and pursuant to 15 C.F.R. § 930.121, the Secretary will be making a determination as to whether the Chevron Destin Dome Block 56 Unit DPP is consistent with the objectives or purposes of the CZMA, or necessary in the interests of national security.

To make the determination as to whether the Chevron Destin Dome Block 56 Unit DPP is consistent with the objectives or purposes of the CZMA, the Secretary must find that: (1) the proposed activity furthers one or more of the national objectives or purposes contained in §§ 302 or 303 of the CZMA; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest; (3) the activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, as amended; and (4) there is no reasonable alternative available (e.g. location design, etc.) which would permit the activity to be conducted in a manner consistent with the management program. See 15 C.F.R. § 930.121. The Secretary must find that each of these elements are satisfied in order to overturn the decision of the State of Florida. EPA has provided comments below, and a copy of the Draft Environmental Impact Statement (DEIS) prepared jointly by the U.S. Environmental Protection Agency (EPA) and the Department of Interior Minerals Management Service (MMS) which EPA hopes will assist the Secretary in making this determination.

## II. FURTHERANCE OF NATIONAL OBJECTIVES

The national objectives and purposes of the CZMA are set forth in Sections 302 and 303 of the Act, and include broad national objectives and purposes. Congressional findings in Section 302 discuss a broad range of issues affecting the coastal zone and include, *inter alia*, findings that "habitat areas of the coastal zone . . . are ecologically fragile . . .," "ecological, cultural, historic, and esthetic values . . . are being irretrievably damaged or lost," and recognizes "the national objective of attaining a greater degree of energy self-sufficiency." Congressional declaration of policy in Section 303 declares the national policy to be, *inter alia*, "to preserve, protect, develop, and where possible, restore or enhance, the resources of the Nation's waters." The CZMA is generally directed to protection of the coastal environment through balancing of competing

## COMMENTS

### Notice of Appeal and Request for Comments

#### Coastal Zone Management Act, Chevron Destin Dome 56 Unit (Florida)

interests. See American Petroleum Inst. v. Knecht, 456 F.Supp. 899 (C.D. Cal. 1978), aff'd, 609 F.2d. 1306 (9<sup>th</sup> Cir. 1979). While energy self-sufficiency is a stated national objective, the balance of the national objectives identified in Section 302 and 303 are overridingly environmental.

### III. ADVERSE EFFECTS AND THE NATIONAL INTEREST

The State of Florida has identified several environmental concerns in support of its determination that the Chevron Destin Dome Block 56 Unit DPP is not consistent with the CZMA. EPA has, in conjunction with the MMS, developed a draft Environmental Impact Statement (DEIS) pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C.A. §§ 4321 et seq. A copy of the DEIS is attached. The DEIS includes consideration of many of the same environmental issues raised by the State of Florida.

Regarding environmental impacts, the DEIS documents the potential for significant potential adverse effects of the proposed activity raised by the State of Florida. See, generally, DEIS at II.B.1.b., Summary of Impacts. Adverse effects from routine conduct include disturbance of Essential Fish Habitat (EFH), impact on hard bottom ecological communities, and long-term water quality impacts. These adverse effects include impacts from routine activities such as emplacement and anchoring/mooring of structures near sensitive areas within the DD 56 Unit and along the pipeline export line, discharge of muds and cuttings, and to a more limited extent other discharges. DEIS at IV.A.2. The DEIS confirms potential adverse impacts to EFH, referencing the importance of the Destin dome area as EFH by reference to the Gulf Fisheries Council's definition of the head of the Desoto Canyon and its upwelling currents as EFH for 14 species of fish.

The DEIS also identifies DD56 as containing hard bottom ecosystems, containing highly productive and rich assemblages of macroinfaunal species. DEIS at III.B.2. The DD56 contains a substantial hard bottom area. DEIS at III.B.2.b. The area may be significant in terms of the combination of high-relief ridge and variable relief formations. EPA has designated lease blocks with similar hard bottom assemblages Areas of Biological Concern for which separate permit conditions are required in order to provide adequate environmental protection. See 40 C.F.R. § 122.27(c). EPA supports Florida's contention that the project may have adverse environmental impact on such areas, and supports the need for additional information to better quantify the extent of adverse environmental impact on such areas from drilling and natural gas production. The Live Bottom Stipulation referenced by MMS has no prescribed resource avoidance component to protect these areas, only identification/delineation. DEIS at II.A.2.a.

The DEIS supports Florida's contention that the discharge of muds and cuttings could result in localized effects on benthic marine organisms up to 1000 meters away, and metal and hydrocarbon contaminants discharged in drilling muds and cuttings could contribute to the long-

## COMMENTS

### Notice of Appeal and Request for Comments

#### Coastal Zone Management Act, Chevron Destin Dome 56 Unit (Florida)

term, regional degradation of offshore water quality. DEIS at IV.A.1.d.(1). The water quality in the vicinity of DD56 is characterized as very good, demonstrating pristine conditions most of the year. DEIS at III.B.3. Modeling of muds and cuttings and possible produced water discharges referenced in the DEIS indicates that federal water quality criteria would not be exceeded at the 100 meter distance. Nevertheless, six years of drilling discharges and 20 years of potential produced water discharges will introduce significant quantities of contaminants to these relatively pristine waters. See IV.D.1.a.(1)(c).

Regarding unplanned events, the DEIS also supports Florida's position regarding adverse environmental impacts from catastrophic oil spills. While the estimate of the likelihood of an offshore oil spill is small (0.1% or less), the DEIS documents that there is as great as a 47 percent chance that the slick would reach Florida state waters before dissipating. DEIS at IV.D.1.a.(3) (page IV-92). The DEIS states that only Florida's coastal waters are expected to be at any significant risk from an offshore diesel or CIS spill (CIS is 96% diesel and 4% spill inhibitor), and those impacts would be acute, localized, and short-term. DEIS at IV.D.1.a.(3) (page IV-93).

EPA defers to the Secretary of Commerce regarding the appropriate weight and significance to assign to the Chevron Destin Dome Block 56 Unit DPP in achieving the national interest objective of attaining a greater degree of energy self-sufficiency. As the information above demonstrates, the project is likely to result in adverse environmental impacts which will be concentrated in the vicinity of the project and would be exacerbated in the case of a catastrophic discharge such as an oil spill. As is pointed out by the State of Florida, there is insufficient information at this time to determine with certainty the totality of adverse environmental impacts that may result from this project. The State of Florida has determined that due to the adverse impacts identified above, and other impacts identified by the State of Florida in this proceeding, the proposed activity is not consistent with Florida's approved CZMA management program. EPA concurs that the project as proposed may result in adverse environmental impacts which may cause the Chevron Destin Dome Block 56 Unit DPP project to be inconsistent with the CZMA.

## IV. COMPLIANCE WITH THE CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

Chevron, U.S.A., Inc. has submitted applications for permits pursuant to the Clean Air Act, 42 U.S.C. § 7401 et seq., and Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. Pursuant to those Federal statutes, EPA has the discretion and authority to issue permits for the Destin Dome Block 56 Unit DPP project and place appropriate conditions and limitations in such permits to ensure compliance with all applicable statutory and regulatory provisions.

EPA has not made a final determination regarding the Clean Air Act and Federal Water Pollution Control Act permit applications, and is precluded as a matter of law from taking final

## COMMENTS

### Notice of Appeal and Request for Comments

### Coastal Zone Management Act, Chevron Destin Dome 56 Unit (Florida)

action with respect to these permit applications. Pursuant to Section 307 of the CZMA,

“no license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant’s certification or until, by the state’s failure to act, the concurrence is conclusively presumed, unless the Secretary finds, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.”

With respect to the Federal Water Pollution Control Act permit application, Section 102 of NEPA requires, in this instance, that a Final Environmental Impact Statement (“FEIS”) be developed prior to making a final determination regarding the permit application. EPA is in the process of seeking public comment on the DEIS for this project, and in the development and preparation of a FEIS for the project. EPA will make a final decision regarding the permit application following the completion of the FEIS.

As the FEIS is not complete and as EPA is precluded by the CZMA from taking final agency action regarding these permit applications, EPA cannot comment regarding permitting pursuant to the Clean Air Act and Federal Water Pollution Control Act. Even if the determination were made to grant the permits, the activity is of the type and nature that in certain circumstances such as in the case of permit violations, blowouts, or non-permitted discharges, violations of the Clean Air Act and Federal Water Pollution Control Act are possible.

## CONCLUSION

EPA believes that the adverse environmental impacts described above are sufficient to support a finding by the Secretary that the activity, as proposed, is not consistent with the objectives of the CZMA.